

## REMARKS

Claims 1-11 and 31-39 are pending in this application. As indicated above, Claim 11 has been amended and Claims 12-30 have been cancelled without prejudice. Additionally, it is gratefully acknowledged that the Examiner has found allowable subject matter in Claims 31-39.

In the Office Action, the Examiner has rejected Claim 11 under 35 U.S.C. §112, second paragraph, as being indefinite, and Claims 1-11 under 35 U.S.C. §103(a) as being unpatentable over *Maxemchuk* (U.S. 6,614,773) in view of *Mouly et al.* (U.S. 4,866,788). Additionally, the Examiner has objected to Claims 31-39 as being dependent upon a rejected independent claim, and has objected to the drawings.

With regard to the objection to the drawings, the Examiner asserts that FIGs. 1, 2A, 2B, 3, and 14 should be labeled as prior art. Accordingly, Replacement Drawings are enclosed for FIGs. 1, 2A, 2B, 3, and 14, which have been amended to include the legend --PRIOR ART--. Therefore, it is respectfully requested that the objection to the drawings be withdrawn.

With regard to the rejection of Claim 11 under 35 U.S.C. §112, second paragraph, as being indefinite, the Examiner takes issue with the term “the dedicated channel”, as independent Claim 10 recites two different dedicated channels, i.e., a first dedicated channel and a second dedicated channel. Accordingly, as indicated of Claim 11 has been amended to more clearly recite which of the dedicated channels is a DPCH, i.e., both the first and the second. Therefore, it is respectfully requested that the rejection to Claim 11 be withdrawn.

With regard to the rejection of independent Claims 1, 4, 7, and 10, the Examiner asserts that *Maxemchuk* teaches all the recitations of these independent claims, except for retransmission being in response to a retransmission request message, and the type of channels used for each transmission i.e., common, dedicated, first dedicated, or second dedicated, which the Examiner asserts is taught in *Mouly*. However, it is respectfully submitted that the Examiner is incorrect with the application of both *Maxemchuk* and *Mouly*.

First, the Examiner asserts that *Maxemchuk* discloses a method for transmitting packet data and side information including a sequence number of the packet data in a CDMA (Code Division Multiple Access) mobile communication system employing a HARQ (Hybrid Automatic Repeat reQuest) scheme for performing retransmission in response to a retransmission request message, citing columns 1 and 2 of *Maxemchuk*. However, not only do columns 1 and 2 of *Maxemchuk* not teach a CDMA mobile communication system employing a HARQ scheme, it is respectfully submitted that there is no section of *Maxemchuk* that even mentions a HARQ scheme.

Additionally, each of independent Claims 1, 4, 7, and 10 recite transmitting side information including a sequence number of the packet data, which the Examiner asserts is taught in *Maxemchuk*. However, it is respectfully submitted that no section in *Maxemchuk* teaches this recitation, nor has the Examiner cited any section of *Maxemchuk* that teaches this element. Therefore, it is respectfully submitted that the Examiner has failed to make a prima facie case in rejecting independent Claims 1, 4, 7, and 10.

Further, while *Maxemchuk* does use the term “transmission” to describe the second transmission of signals over another channel, it is respectfully submitted that this is not an equivalent of a retransmission as recited in independent Claims 1, 7, and 10. More specifically, independent Claims 1, 7, and 10 recite retransmitting data after an initial transmission, after receiving a retransmission request. This clearly describes an initial transmission from A to B, and a retransmission of the same information from A to B, although over a different channel, after receiving a retransmission request message in A from B. However, *Maxemchuk* clearly uses the term “retransmission” in a scenario in which A makes an initial transmission B, and then B makes a retransmission to C. Therefore, it is respectfully submitted that *Maxemchuk* does not teach retransmitting the packet data and the side information as recited in independent Claims 1, 4, 7, and 10.

Additionally, based in the above argument, even assuming that the Examiner’s assertions about *Mouly* were correct, i.e., that *Mouly* does teach retransmitting over a second channel after

receiving a retransmission request message, it is respectfully submitted that applying this alleged teaching of *Mouly* to *Maxemchuk* would not provide the method as recited in independent Claims 1, 7, and 10, because even if the initial transmitter in *Maxemchuk*, e.g., transmitter A, receives a retransmission request message, transmitter B, not A, performs the retransmission in *Maxemchuk*.

Further, it is respectfully submitted that the Examiner's assertions regarding *Mouly* are incorrect. That is, *Mouly* clearly teaches retransmission on a single shared channel, for MSs requesting a dedicated channel. There is no teaching in *Mouly* that the retransmission is performed on the dedicated channel, rather retransmission is performed on the same shared channel, as is illustrated in FIG. 4. Accordingly, it is respectfully submitted that the Examiner is incorrect in asserting that it would be obvious to apply *Mouly* to *Maxemchuk* in order to teach transmitting and retransmitting over common and dedicated channels, respectively, as is recited in Claims 1, 7, and 10.

Additionally, it is noted for the Examiner that independent Claim 4 recites transmitting the packet data over a dedicated channel, and transmitting the side information over a common channel, i.e., different recitations than in independent Claims 1, 7, and 10. However, the Examiner has provided no additional argument in rejecting these unique recitations of Claim 4. Accordingly, it is respectfully submitted that the Examiner has failed to examine independent Claim 4 and it is respectfully requested that the Examiner make a proper examination of Claim 4.

Based at least on the arguments presented above, it is respectfully submitted that the Examiner is incorrect in rejecting independent Claims 1, 4, 7, and 10 as being unpatentable over *Maxemchuk* in view of *Mouly*. Accordingly, it is respectfully requested that the rejection of these claims be withdrawn.

Without conceding the patentability per se of dependent Claims 2, 3, 5, 6, 8-11, and 31-39, they are likewise believed to be allowable by virtue of their dependence on independent Claims 1, 4, 7, and 10, respectively. Accordingly, reconsideration and withdrawal of the rejections and objections of dependent Claims 2, 3, 5, 6, 8-11, and 31-39 are respectfully requested.

In view of the preceding amendments and remarks, it is respectfully submitted that all pending claims, namely Claims 1-11 and 31-39 are in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", written over the typed name.

Paul J. Farrell

Registration No. 33,494

Attorney for Applicant(s)

DILWORTH & BARRESE, LLP  
333 Earle Ovington Blvd.  
Uniondale, New York 11553  
(516) 228-8484

PJF/DMO:las